

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

SOUTH CAROLINA COASTAL)	
CONSERVATION LEAGUE, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	
)	Case No. 2:19-cv-03006-DCN
ANDREW R. WHEELER, in his official)	
capacity as Administrator of the U.S.)	
Environmental Protection Agency, <i>et al.</i> ,)	
)	
Defendants,)	
)	
AMERICAN FARM BUREAU)	
FEDERATION, <i>et al.</i> ,)	
)	
Intervenor-Defendants.)	
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JOINT STATUS REPORT AND MOTION TO GOVERN FURTHER PROCEEDINGS

The parties file this Joint Status Report and Motion to Govern Further Proceedings pursuant to the Court’s September 4, 2020 Order holding this case in abeyance for an additional 60 days and directing the parties to file a proposal to govern further proceedings at the conclusion of the abeyance period. ECF No. 57. The parties have conferred and jointly request that the Court continue the abeyance for an additional 60 days, after which the parties will submit a proposal to govern further proceedings.

In support, the parties state as follows:

1. Plaintiffs South Carolina Coastal Conservation League, et al., challenge a regulation that (1) repealed the “Clean Water Rule”—a 2015 rule defining “waters of the United States” under the Clean Water Act—and (2) recodified the prior regulatory definition of “waters

of the United States.” See ECF No. 1 ¶ 1 (challenging Final Rule, Definition of “Waters of the United States”—Recodification of Pre-Existing Rules, 84 Fed. Reg. 56,626 (Oct. 22, 2019) (“Repeal Rule”)).

2. On January 17, 2020, Defendants moved to dismiss the complaint for lack of subject matter jurisdiction. See ECF No. 28.

3. On January 23, 2020, the Administrator of EPA and the Assistant Secretary of the Army for Civil Works signed a final rule entitled “Navigable Waters Protection Rule: Definition of ‘Waters of the United States.’” This rule defines “waters of the United States” under the Clean Water Act and replaced the definition promulgated in the Repeal Rule, which is the subject of this litigation. The “Navigable Waters Protection Rule” was published in the Federal Register on April 21, 2020, see 85 Fed. Reg. 22,250 (Apr. 21, 2020), and went into effect on June 22, 2020.

4. There have been several challenges to the “Navigable Waters Protection Rule” filed to date, including one before this Court wherein dispositive briefing is now complete and oral argument on the dispositive motions has been scheduled. See S.C. Coastal Conservation League v. Wheeler, No. 2:20-cv-01687-DCN, ECF No. 1 (D.S.C. Apr. 29, 2020).¹

5. Abeyance remains appropriate considering the Court’s May 29, 2020 and September 4, 2020 Orders, the publication of the replacement definition of “waters of the United

¹ See also Conservation Law Found. v. EPA, No. 1:20-cv-10820-DPW, ECF No. 1 (D. Mass. Apr. 29, 2020); California v. Wheeler, No. 3:20-cv-03005-RS, ECF No. 1 (N.D. Cal. May 1, 2020); Chesapeake Bay Found., Inc. v. Wheeler, 1:20-cv-01064-RDB, ECF No. 1 (D. Md. Apr. 27, 2020); N.M. Cattle Growers’ Ass’n v. EPA, 1:19-cv-00988-JHR-SCY, ECF No. 26 (D.N.M. Apr. 27, 2020); Or. Cattlemen’s Ass’n v. EPA, 3:19-cv-00564-MM, ECF No. 90 (D. Or. May 1, 2020); Wash. Cattlemen’s Ass’n v. EPA, 2:19-cv-00569-JCC, ECF No. 72 (W.D. Wash. May 4, 2020); Murray v. Wheeler, 1:19-cv-01498-LEK, ECF No. 17 (N.D.N.Y. May 11, 2020); Colorado v. EPA, 1:20-cv-01461-WJM, ECF No. 1 (D. Colo. May 22, 2020); Pasqua Yaqui Tribe v. EPA, 4:20-cv-00266-RM, ECF No. 1 (D. Ariz. June 22, 2020); Navajo Nation v. Wheeler, 2:20-cv-00602-MV-GJF, ECF No. 1 (D.N.M. June 22, 2020); Puget Soundkeeper All. v. EPA, 2:20-cv-00950-JCC, ECF No. 1 (W.D. Wash. June 22, 2020); Env’t Integrity Project v. EPA, 1:20-cv-01734-KBJ, ECF No. 1 (D.D.C. June 25, 2020).

States,” and argument on dispositive motions scheduled in a separate challenge to the “Navigable Waters Protection Rule” before this Court. The new rule and disposition of challenges thereto may affect the issues and arguments at play in this litigation and other related legal challenges regarding the regulatory definition of “waters of the United States.”

Accordingly, the parties respectfully request that the Court hold this case in abeyance for an additional 60 days, up to and including January 2, 2021.

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